

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION NO.419 OF 1998

SHAIKH FAKIRMOHAMAD PIRMOHAMAD

VERSUS

STATE OF GUJARAT

Appearance:

MR SV RAJU for the Petitioner

MR KT DAVE, APP, for the Respondent-State

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order:16/03/1998

C.A.V.ORDER

The petitioner, an officer of the State Bank of India, filed this application u/s.438 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."), praying for anticipatory bail apprehending arrest in connection with First Information Report registered with Tharad Police Station being I C.R.No.150/97 on the complaint filed by the informant Shri V.L.Pandya on 25.11.97, for the offence u/s.409, 468, 477A, 471 and 201 of the Indian Penal Code (hereinafter referred to as "IPC").

2. Before approaching this Court, the petitioner approached to the Additional Sessions Judge, Palanpur, for grant of anticipatory bail where the application was registered as Cr.Misc.Application No.838 of 1997. The learned Additional Sessions Judge at Palanpur, after considering the matter on merits, vide order dated 12.12.97, dismissed the said application.

3. The learned counsel for the petitioner contended that the amount of Rs.1,28,989/- of the Bank which has been alleged to have been misappropriated by the petitioner has already been deposited by him with the Bank by way of three demand drafts and those demand drafts have admittedly been encashed on 20th July 1997, and as such, offence u/s.409 of the IPC, as alleged against him does not stand to any footing. In support of this contention, the learned counsel for the petitioner placed reliance on the decision of the Apex Court in the case of Narendra Pratap Narain Singh & Anr. v. State of U.P., reported in AIR 1991 SC 1394. It has next been

contended that so far as the offence alleged against the petitioner u/s.468, 471, 477A and 201 of IPC are concerned, the petitioner has falsely been implicated. He further placed reliance on another decision of the Apex Court in the case of Gurbaksh Singh Sibbia etc. v. The State of Punjab, reported in AIR 1980 SC 1632.

4. On the other hand, the learned APP strongly opposed this application. He contended that it is not the case where the petitioner should be given benefit of Section 438 of Cr.P.C. It is a case where an officer of the Bank has misappropriated a sum of Rs.1,28,000/- and odd of the Bank and merely because on being found by the Bank of this misappropriation, the amount has been deposited by the petitioner, the offence u/s.409 of IPC is not ruled out. Misappropriation of Bank's money by its officers/employees is a common feature in the country and in such matters if a lenient view is taken then it will encourage them to indulge in such activities which are not in the interest of public at large. It has next been contended that the petitioner has not only committed offence u/s.409 of IPC, but more serious offence has been committed by him of destroying the evidence against him. Lastly, the learned APP contended that the learned Additional Sessions Judge has, after taking into consideration all the contentions raised by the learned counsel for the petitioner there, not considered it to be a case where the accused should be given the benefit of Section 438 of Cr.P.C.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. I have gone through the contents of the First Information Report, wherefrom I find that there is a prima-facie case of serious nature against the petitioner. The petitioner is an officer of the Bank and misappropriation of the money of the Bank should be taken seriously and dealt with severely. The very fact that the petitioner has deposited an amount of Rs.1,28,000/- and odd goes to show that prima-facie he has accepted his guilt. However, I am not expressing any final opinion on the merits of the matter and these observations made in this order may not be taken to be final opinion in the matter, as I am only dealing with the matter at this stage whether the petitioner should be given the benefit of Section 438 of Cr.P.C. or not. Not only it is a case of offence u/s.409 of the IPC but other serious offence have also been alleged against the petitioner. It is too difficult to accept at this stage that the petitioner has falsely been implicated in the matter. It is a matter of

trial and prima-facie on the basis of evidence produced on the record, I do not find it to be a fit case where the petitioner should be given the benefit of Section 438 of Cr.P.C. The benefit of Section 438 of Cr.P.C. is not as a matter of course and right to be given to the accused. Only where this Court finds that the petitioner has been falsely implicated or the case is politically motivated or even if the allegation made against the petitioner in the compliant are taken to be correct on the face value, no prima-facie case has been made out against the accused, then there may be some justification to exercise the powers u/s.438 of Cr.P.C. but not otherwise. The learned lower Court has, after scrutinising the matter on merits, come to the conclusion that prima-facie a serious case has been made out against the petitioner and as such, it has not committed any error, much less any illegality in declining to extend the benefit of Section 438 of Cr.P.C. to the petitioner. Reliance placed on the decision of the Apex Court in the case of Narendra Pratap Narain Singh & Anr. v. State of U.P. (supra) by the learned counsel for the petitioner is hardly of any help to the petitioner at this stage. Similarly, in the case of Gurbaksh Singh Sibbia etc. v. The State of Punjab (supra) the Apex Court has laid down the conditions to be satisfied for grant of anticipatory bail u/s.438 of Cr.P.C. It is not law that in every case where the prayer has been made for grant of anticipatory bail by the accused, it has to be accepted. It depends on the facts of each case and as stated earlier, I do not find the present case to be of the category where it can be said that the petitioner has falsely been implicated in the case or the case is politically motivated or even if the allegation made against the petitioner in the compliant are taken to be correct on the face value, no prima-facie case has been made out against the petitioner.

7. Taking into consideration the totality of the facts of the case, I do not find any ground to extend the benefit of Section 438 of Cr.P.C. to the petitioner in the present case.

8. The Cr.Misc. Application is dismissed.

(S.K.Keshote, J)

(sunil)

